

State Form 4336

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: February 12, 1996

To: Solid Waste Enforcement File Thru: Janet Johnson

From: Jennifer Reno, OE-Solid Waste

Subject: Gary Development Company, Inc., 90-W-J-428, Lake County

On March 23, 1994, a Final Order of the Water Pollution Control Board, was signed by Kathy Prosser, Technical Secretary of the Water Pollution Control Board. This Order required Gary to immediately cease discharging any water off-site until it obtains a valid NPDES permit and that IDEM shall rule on Gary's NPDES application within sixty (60) days of receiving it. Based on this Order, the Office of Enforcement, Solid Waste Section, is closing the administrative enforcement action against Gary Development Company, Inc.

STATE OF INDIANA)
COUNTY OF MARION)

SS: BEFORE THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT
WATER POLLUTION CONTROL BOARD

IN THE MATTER OF:)

COMMISSIONER, INDIANA)
DEPARTMENT OF ENVIRONMENTAL)
MANAGEMENT)

Complainant,)

vs.)

GARY DEVELOPMENT COMPANY, INC.)

Respondent.)

CAUSE NO. 90-W-J-428

FINAL ORDER OF THE WATER POLLUTION CONTROL BOARD

TO: Scott R. Storms, Esq.
Indiana Department of
Environmental Management
Indiana Government Center North
100 N. Senate
Indianapolis, Indiana 46204

Warren Krebs, Esq.
Parr, Richey, Obremskey & Morton
10 W. Market Street
Indianapolis, Indiana 46204

On March 9, 1994, the Water Pollution Control Board entered an Order modifying the Recommended Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge, issued on April 26, 1991. The following, Findings of Facts, Conclusions of Law, and Order, is hereby entered as the Final Order of the Water Pollution Control Board in the above captioned cause.

FINDINGS OF FACT

1. The Commissioner of the Indiana Department of Environmental Management (IDEM) is the Complainant in this cause and has jurisdiction over the Respondent and the subject matter of this action. The IDEM also has the legal authority to issue emergency orders under IC 4-21.5-4.
2. The Respondent is Gary Development Company, Inc. (Gary) and owns a sanitary landfill located in Gary, Indiana.
3. On August 1, 1990, an inspector with the IDEM conducted an on-site investigation of Gary's Landfill property in response to allegations that water was being discharged from the landfill property to the Grand Calumet River.

4. IDEM's inspector observed a 2-5 acre pond on the far north side of Gary's property whose elevation was approximately 20 to 30 feet below that of the landfill.
5. A watchman employed by Gary advised the inspector that recent heavy rains had made it necessary to discharge excess water and to bring in truckloads of clay in order to prevent exposure of the landfill from the washing away of topsoil.
6. IDEM's inspector heard a pump running and observed water being pumped from the pond via a flexible hose which ran south into a 4" PVC pipe which was buried for most of its length. The PVC pipe emptied into a spillway which allowed the water to flow to a small ditch along railroad tracks and the ditch in turn entered the Grand Calumet River.
7. Gary's watchman refused to provide any further details about the discharge and ran to turn off the pump while IDEM's inspector followed the discharge line the other way.
8. As the pump was being shut off, the flow of water from the discharge end of the pipe was reduced to a trickle and the inspector observed a large volume of ponded water just below the end of the discharge pipe and a burned out area of vegetation further on towards the ditch.
9. The inspector did not take any samples of either the pond or the discharged water and none have since been taken.
10. Gary does not have a NPDES permit for discharging into the Grand Calumet River.
11. On October 18, 1990, the IDEM issued an Emergency Order of the Commissioner (Order) to Gary based, in whole, on August 1, 1990, inspection report.
12. The Order alleged that Gary was discharging leachate water from their facility to the Grand Calumet River without the benefit of a NPDES permit.
13. The Order also alleges that the discharge of untreated leachate threatens the aquatic environment of the Grand Calumet River and human health.
14. As a result of IDEM's findings, Gary was ordered to immediately cease the discharge of leachate into state water and to apply for a NPDES permit within 60 days of the Order.
15. Gary timely filed its appeal of the Order, thereby initiating this action.
16. On April 14, 1980, Gary entered into an Agreed Order in Cause No. B-406, which the Stream Pollution Control Board approved on May 20, 1980. The Agreed Order required Gary to cease discharge of water from its landfill to the Grand Calumet River or other waters of the state except in conformity with a

NPDES permit.

17. The April 14, 1980, Agreed Order operated as a provisional operating permit and required Gary to apply for a renewal no later than 90 days prior to the expiration date of the Agreed Order.

18. The Indiana Environmental Management Board (IEMB) received Gary's application for renewal on November 17, 1980. On February 16, 1982, IEMB granted Gary a Renewal of Operating Permit No. 45-2, with nine conditions attached. Condition No. 5 prohibited Gary from discharging water from the site to the Grand Calumet River or other waters of the state, except in conformity with an approved NPDES permit.

19. Gary filed a petition for hearing, contesting the imposition of the nine conditions, including Condition No. 5.

20. Thereafter, Gary and IEMB reached a settlement on Gary's appeal under Cause No. N-53, and their Settlement Agreement and Recommended Agreed Order was approved and adopted by the Indiana Environmental Management Board on February 18, 1983.

21. Paragraph No. 3 of this Agreed Order deleted in its entirety the contested condition No. 5, thereby eliminating the requirement for a NPDES permit.

22. The Agreed Order in Cause No. N-53 provided that Gary's operating permit should last for a period of two years from its effective date of March 1, 1983.

23. Prior to the end of this period, Gary submitted an application for renewal of its operating permit, but no decision has been issued thereon.

24. The 2-5 acre pond from which water was being discharged on August 1, 1990, is located in a portion of the landfill which remains unfilled and below the approved site elevation.

25. This northern section remains unfilled because under the terms of the Agreed order in Cause no. N-53, Gary, prior to filling it, was required to take four soil borings from the site's west wall. If these test results showed the permeability of the clay wall to be 5.0×10^{-6} centimeters per second or less, then construction of the remaining portion of the clay perimeter walls could proceed and filling commence.

26. The difference in the elevations of Gary's filled and unfilled sites contributes significantly to the ponding of water in the unfilled area.

27. On August 29, 1989, Gary filed with the IDEM a Notice of Suspending Operations and Petition for Variance under I.C. 13-7-7-6. The notice also advised the IDEM of its failure to respond to both the 1985 soil boring results and the 1985 permit renewal application. In addition, Gary informed IDEM of the continued

existence of the unfilled area which remains below the approved site elevation.

28. On December 11, 1989, Gary filed a Request for Hearing on its Petition for Variance. As with the soil boring report and operating permit renewal application, IDEM has never ruled on Gary's request for a hearing.

CONCLUSIONS OF LAW

1. The February 18, 1983, Agreed Order, in Cause No. N-53 is still in effect due to IDEM's failure to rule on Gary's operating permit renewal application.

2. 327 IAC 5-2-2 requires a NPDES permit for "...any discharge of pollutants into waters of the state as a point source discharge..."

3. There is not sufficient evidence to support IDEM's contention that the water discharged contained leachate.

4. However, the proximity of the pond to land-filled areas, plus the burned-out vegetation near the mouth of the pipe, supports the inference that the discharged water contains one or more pollutants.

5. Since the terms of the Agreed Order under Cause No. N-53 explicitly deleted the requirements for a NPDES permit, no chemical analysis of other observations sufficiently support IDEM's conclusion that the discharged water contained leachate, the Emergency Order dated October 18, 1990, was not an appropriate vehicle for resolution of the discharge problem.

6. Nonetheless, there is sufficient evidence to support IDEM's position that Gary must obtain an NPDES permit for its point source discharge.

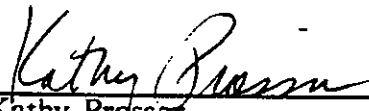
ORDER

1. Gary shall immediately cease discharging any water off-site until it obtains a valid NPDES permit.

2. IDEM shall rule on Gary's NPDES application within sixty days of receiving it.

The Modified Findings of Facts, Conclusions of Law, and Order are hereby approved and entered as the Final Order of the Water Pollution Control Board. Pursuant to I.C. 4-21.5-5-5, a petition for judicial review is timely only if it is filed within thirty (30) days after the date that notice of the agency action, that is the subject of the petition for judicial review, was served.

Dated at Indianapolis, Indiana this 23rd day of March 1994.


 Kathy Prosser
 Technical Secretary
 Water Pollution Control Board

cc: Office of Water Management
 Office of Solid and Hazardous Waste Management
 Office of Hearings

STATE OF INDIANA)
)
 COUNTY OF MARION)

SS:

BEFORE THE WATER POLLUTION
 CONTROL BOARD

RECEIVED

MAY 13 1991

INDIANA WATER POLLUTION
 CONTROL BOARD

IN THE MATTER OF:)

COMMISSIONER, INDIANA)
 DEPARTMENT OF ENVIRONMENTAL)
 MANAGEMENT,)

Complainant,)

CAUSE NO. 90-W-J-428

vs.)

GARY DEVELOPMENT CO., INC.)

Respondent.)

IDEM'S OBJECTIONS TO THE RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

Comes now the Complainant, by counsel, and objects to the following RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE filed in this cause on April 26, 1991:

1. Finding of Fact numbered 26 where the Administrative Law Judge (ALJ) found that the report of soil borings performed by ATEC Associates demonstrated the permeability to be within required parameters.

→ *Consultant 317-577-1261, Indianapolis*

2. Conclusion of Law numbered 1 to the extent that the ALJ found that Respondent invoked the jurisdiction of the Solid Waste Management Board in this proceeding.

3. Conclusion of Law numbered 6.

4. Conclusion of Law numbered 8 where the ALJ found that the soil boring report submitted by Respondent in 1985 demonstrated

an acceptable level of impermeability according to the terms of the Agreed Order in Cause No. N-53.

5. Conclusion of law numbered 9 where the ALJ found that Respondent is entitled to a hearing on its Petition for Variance.

6. Order numbered 3 where the ALJ found that Respondent may at any time commence construction of the remaining portion of the clay perimeter in accordance with the terms of the Agreed Order in Cause No. N-53.

7. Order numbered 4 where the ALJ granted Respondent's request for a hearing and assigned the matter as Cause No. 91-S-J-488 entitled "In the Matter of: Request for Variance from Closure and Post-Closure Rules, Gary Development Company, Inc."


Each finding of fact, conclusion of law, or order challenged above violates one or more of the following legal requirements in that it is:

- (A) Arbitrary, capricious, an abuse of discretion, or contrary to law;
- (B) Contrary to constitutional right, power, privilege, and immunity;
- (C) In excess of statutory jurisdiction, authority, or limitations;
- (D) Without observance of procedure required by law; or
- (E) Unsupported by substantial evidence.

WHEREFORE Complainant requests the Water Pollution Control Board to modify the Recommended Findings of Fact, Conclusions of

Law and Order of the Administrative Law Judge by deleting therefrom those paragraphs which have been set forth and challenged above.

Respectfully submitted:



Ihor N. Boyko
Counsel for IDEM

CERTIFICATE OF SERVICE

I hereby certify that a copy of these objections was served upon Counsel for the Respondent by U.S. first class mail this 13th day of May, 1991, addressed as follows:

Warren D. Krebs, Esq.
1600 Market Tower
Ten West Market Street
Indianapolis, IN 46204-2970

A copy of these objections has also been served upon each of the following offices within IDEM: Office of Hearings; Office of Water Management; and Office of Solid and Hazardous Waste Management.


Ihor N. Boyko
Counsel for IDEM

IDEM
Office of Legal Counsel
105 South Meridian Street
Indianapolis, IN 46225
(317) 232-8515

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Office of Water Management - Inspections Section
100 North Senate Avenue
P.O. Box 6015
Indianapolis, IN 46204

FACILITY SITE INSPECTION

PART I - Basic information about the facility:

FACILITY NAME: Gary Development Company, Inc.

ADDRESS: 479 North Cline Avenue
P.O. Box 6056
Gary, Indiana 46406

SITE CONTACT: Larry Hagen, Jr.
Foreman
(219) 944-7858

CORRESPONDENCE TO: Bose-McKinney and Evans
Atty. Stephen Cherry
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204
Telephone: (317) 684-5105

RECEIVING STREAM: Grand Calumet River

FACILITY SIC CODE: 4953 (Refuse Systems)

FACILITY DESCRIPTION: A former mined-out sand pit, the facility began accepting solid waste for disposal in September 1974. The facility operated as a sanitary landfill until August 1989, when waste acceptance reportedly stopped.

PART II - Basic information on inspection findings:

On September 26, 1996, IDEM-NWRO staff members Mark Balazs (OWM), Bob Blaesing (OSHWM), Bob Lamprecht (OSHWM), Bill Burns (OSHWM), and U.S. EPA staff member Mike Mikulka and Indiana Department of Natural Resources-Division of Soil Conservation Urban Conservation Specialist Larry Osterholz conducted an inspection of the abovementioned facility. Photographs of the facility were taken by OSHWM staff. This report only identifies findings of OWM staff member Mark Balazs.

No point-source discharges of process (leachate) waters were observed leaving the property, and there was no evidence of active pumping discharges. However, several point-source discharges of storm water runoff were observed leaving the property's southern boundary into the Grand Calumet River. The runoff was visibly laden with soil sediment and caused a discoloration of the Grand Calumet River along the facility boundary. A sample of the runoff was collected, but never analyzed.

Based on the facility's operational practices and SIC Code (landfill that received industrial wastes classification), an application must be submitted for a storm water permit in accordance with 327 IAC 15-6. It is recommended that the facility apply for an individual storm water permit, based on the potential severity of contamination entering the adjacent Grand Calumet River. This requirement for a permit is also specified in a March 1994 Final Order of the Water Pollution Control Board. In the Order, the company was ordered to cease discharging any water off-site until the discharge conforms with a valid NPDES permit.

PART III - Contact information:

If you require further information about the storm water permitting issue, contact Mark Balazs at (219) 881-5759 or Laura Bieberich, Storm Water Permitting Desk, at (317) 233-6725.

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
REFERENCE 13Page 12
action

INDIANAPOLIS

OFFICE MEMORANDUM

DATE: November 9, 1990

TO: David Nelsen, Assistant Commissioner
Office of Water Management

THRU:

FROM: Wayne E. Penrod, Chief Administrative Law Judge
Office of Hearings

SUBJECT: Petition for Administrative Review

Attached hereto is a copy of what appears to be a Petition for Review regarding either a permit action or an enforcement action which is believed to have been originally issued by your office.

In order for the Office of Hearings to initiate further proceedings in this matter, please supply us with a copy of the permit or enforcement action referred to within five working days.

If the permit action or enforcement action was sent by certified mail, a copy of the receipt would also be helpful.

When replying, please refer to:

Cause No. 90-W(E)428
Commissioner, IDEM vs.
Gary Development Co., Inc.

Other #s use J

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

GARY DEVELOPMENT COMPANY, INC.,

Respondent.

Dept. of Environmental Mgmt.
Commissioner's Office

NOV 2 1990

CAUSE NO. B-1357

PETITION FOR HEARING
ON ISSUANCE OF EMERGENCY ORDER

NOV 08 1990

DE OF HEARINGS
DEPARTMENT

The Respondent Gary Development Company, Inc. (hereinafter called "GDC"), pursuant to Indiana Code 13-7-12-1(d) petitions for and requests a hearing under Indiana Code 4-21.5-4-4 regarding the Commissioner's Emergency Order with dates of October 16 and October 18, 1990. GDC's appeal includes, but is not limited to, contesting the following issues in the Emergency Order:

1. The Complainant did not observe leachate discharging from GDC's facility into the Grand Calumet River on August 1, 1990.
2. Any surface water alleged to be discharging from GDC's facility does not constitute a "point source discharge of pollutants to waters of the state."
3. The surface waters on GDC's site do not constitute leachate, and the Complainant on August 1, 1990, never collected

and analyzed surface waters to determine whether such on-site water contained materials removed from solid waste necessary to classify it as "leachate."

4. Complainant on August 1, 1990, did not sample and analyze the water of the state of Indiana known as the Grand Calumet River near GDC's facility, and thus, there exists no threat of pollution in the mixing zone to the aquatic environment of the Grand Calumet River or to human health.

WHEREFORE, the Respondent Gary Development Company, Inc., petitions for a hearing regarding the Emergency Order of the Commissioner and regarding all issues raised in this Petition, and requests that the Emergency Order be voided.

PARR RICHEY OBREMSKEY & MORTON

Attorneys for Gary Development
Company, Inc.

By



Warren D. Krebs

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